Tan Han Hua (as personal representative to the estate of Tan Chin Hin) & Anor v Arularasu a/l Balakrishnan & Ors

HIGH COURT (MUAR) — CIVIL SUIT NO 22–72 OF 2005
AHMADI ASNAWI JC
24 DECEMBER 2009

Criminal Procedure — Arrest — Wrongful arrest — Charge under s 420 of the Penal Code — Whether reasonable suspicion sufficient to effect arrest — Whether arrests lawful — Criminal Procedure Code s 23(1)(a)

Criminal Procedure — Police investigation — Remand, warrant of — Discretionary power of magistrate acting under s 117 of the Criminal Procedure Code — Whether warrant of remand lawfully passed by magistrate — Criminal Procedure Code s 117

Tort — False imprisonment — Arrest — Plaintiffs' remand and arrest based on police report made by first defendant — Whether first defendant had right to lodge police report accusing plaintiffs of cheating — Whether police report false — Whether fourth to sixth defendants conspired with first and second defendants to arrest plaintiffs — Whether arrests lawful — Whether plaintiffs discharged burden of proof — Penal Code s 420 — Criminal Procedure Code s 23(1)(a)

The first defendant, was at all material time the manager of Sanjung Asphalt Sdn Bhd ('the second defendant'). Tan Chin Hin ('the late first plaintiff'), the father of the second plaintiff, had handed over two cheques for the sums of RM17,000 and RM36,000 to the first defendant as payment for goods supplied by the second defendant to one Syarikat Perniagaan Hanlink ('PHL'), a firm run by one Tan Han Tiong, who was also the late first plaintiff's son. However, these two cheques were dishonoured upon presentation. Subsequently another cheque for the sum of RM17,000 ('the third cheque') issued by the second plaintiff, as the sole proprietor of Syarikat Lian Chen Engineering Works ('LCEW'), and made payable to the second defendant was given to the first defendant, again through the late first plaintiff. This third cheque was also dishonoured with the remarks 'stopped payment'. The first defendant then lodged a police report accusing the plaintiffs of cheating him and the second defendant. Pursuant to the said police report Sjn Abd Rahman bin Hj Sulaiman ('the third defendant') commenced investigations and had the plaintiff arrested, remanded for six days and then charged under s 420 of the Penal Code, which case was still pending. The plaintiffs then commenced the

present action against the defendants seeking, inter alia, a declaration that their arrest and remand was unlawful and unconstitutional; damages for wrongful arrest and detention; exemplary and aggravated damages; costs and interest. It was the plaintiffs' case that the first defendant had no basis to lodge the police report against them; and that the third to sixth defendants arrest and remand of the plaintiffs was baseless and unlawful as it was made pursuant to a false police report. According to the plaintiffs the first defendant had no right to lodge the police report accusing the plaintiffs of cheating him and the second defendant company because the plaintiffs had no business dealings with him or the second defendant. The second plaintiff submitted that the business transactions between the first and second defendants and Tan Han Tiong of PHL had led to the issue of the three cheques and that as such the first and second defendants had no claims against the plaintiffs. It was further submitted that PHL and LCEW were separate entities and that the late first plaintiff was a mere messenger between PHL, LCEW and the second defendant. Additionally it was argued that the second plaintiff had only issued the third cheque to the second defendant upon the request of the said Tan Han Tiong of PHL, who had promised to credit the second plaintiff's bank account with the said sum within an agreed date, and that when the latter failed to abide by his promise the second plaintiff had stopped payment of the third cheque. The plaintiffs further alleged that the fourth, fifth and sixth defendants had allowed themselves to be used by the first and second defendants to exert pressure on the plaintiffs to settle a civil debt and that the third defendant being the servant or agent of the fourth to sixth defendants had conspired with the first and second defendants to arrest the plaintiffs without carrying any proper investigation. The plaintiffs thus submitted that their arrest was unlawful, an abuse of police power under the CPC and ultra vires the Federal Constitution.

Held, dismissing the plaintiffs' application with costs:

(1) The plaintiffs, who bore the burden of proving the allegation that the third to sixth defendants had conspired with the first and second defendants to arrest the plaintiffs, did not adduce an iota of evidence to support those allegations. As they had failed to discharge the said burden, the allegation of conspiracy did not warrant any further attention (see para 9).

(2) It was an undisputed fact that all three cheques given to and paid in favour of the second defendant through the late first plaintiff were dishonoured. The arrangement between the second plaintiff and Tan Han Tiong of PHL in respect of the issuance of the third cheque was none of the first defendant's business and it was equally irrelevant that PHL and LCEW were separate entities. In the given circumstances the second defendant's rights had been transgressed and there was a real basis for the

first defendant to lodge the police report complaining that the second defendant company was cheated by the plaintiffs. The said police report was not a false report (see para 13).

(3) As the existence of a reasonable suspicion to believe that a person had committed an offence was enough to trigger the arrest mechanism under s 23(1)(a) of the CPC, the third defendant was well within the law in arresting the plaintiffs. The third defendant opined that the case was criminal in nature as it involved elements of deception and that the offence alleged to have been committed was a seizable offence under s 420 of the Penal Code, under which the perpetrators could be arrested without warrant. As the third defendant had acted reasonably in his actions in pursuing with his investigations and in arresting both the plaintiffs, their arrests were proper and lawful. Further the second plaintiff's own admission that he issued the third cheque for the sum of RM17,000 when the said sum was never in his bank account was proof of deception (see para 17).

(4) The plaintiffs' contention that the remand order was wrongly granted or was totally unconstitutional was without basis in the absence of any evidence to the contrary. The warrant of remand in the present case was lawfully passed by the magistrate, a court of competent jurisdiction, by virtue of s 117 of the CPC. As the plaintiffs neither appealed nor sought a revision of the granting of the warrant of remand it was not open to them to now contend that the said warrant was wrongly sought and wrongly granted or that it was totally unconstitutional. Further the plaintiffs had not adduced any evidence to show how the magistrate had erred in granting the said warrant of remand to warrant any interference (see paras 22–23).

[Bahasa Malaysia summary

Defendan pertama, pada kesemua masa material adalah pengurus Sanjung Asphalt Sdn Bhd ('defendan kedua'). Tan Chin Hin ('mendiang plaintif pertama'), bapa kepada plaintif kedua, telah memberikan dua keping cek berjumlah RM17,000 dan RM36,000 kepada defendan pertama sebagai bayaran untuk barangan yang dibekalkan oleh defendan kedua kepada Syarikat Perniagaan Hanlink ('PHL'), sebuah firma yang dikendalikan oleh Tan Han Tiong, yang juga merupakan anak lelaki mendiang plaintif pertama. Walau bagaimanapun, kedua-dua cek ini ditendang semasa dikemukakan untuk pembayaran. Kemudian sekeping lagi cek untuk jumlah RM17,000 ('cek ketiga') dikeluarkan oleh plaintif kedua, sebagai pemilik tunggal Syarikat Lian Chen Engineering Works (LCEW), dan untuk dibayar kepada defendan kedua telah diberikan kepada defendan pertama, sekali lagi melalui mendiang plaintif pertama. Cek ketiga itu juga telah ditendang dengan nota 'stopped payment'. Defendan pertama kemudian membuat laporan polis menuduh plaintif-plaintif menipunya dan defendan kedua. Berikutan laporan polis

tersebut Sjn Abd Rahman bin Hj Sulaiman ('defendan ketiga') memulakan penyiasatan dan menangkap, menahan reman plaintif selama enam hari dan kemudian dituduh di bawah s 420 Kanun Keseksaan, yang masih belum selesai. Plaintif-plaintif kemudian memulakan tindakan ini terhadap defendan-defendan memohon, antara lain, satu deklarasi bahawa penangkapan dan penahanan reman mereka salah di sisi undang-undang dan tidak berperlembagaan; ganti rugi untuk penangkapan salah; ganti rugi teladan dan ganti rugi teruk; kos dan faedah. Adalah kes plaintif-plaintif bahawa defendan pertama tidak mempunyai asas untuk membuat laporan polis terhadap mereka; dan bahawa penangkapan dan penahanan plaintif-plaintif oleh defendan ketiga hingga keenam adalah tidak berasas dan salah di sisi undang-undang kerana ia dibuat berikutan laporan polis yang palsu. Menurut plaintif-plaintif, defendan pertama tidak mempunyai hak untuk membuat laporan polis menuduh plaintif-plaintif menipunya dan syarikat defendan kedua kerana plaintif-plaintif tidak mempunyai urusan perniagaan dengannya atau defendan kedua. Plaintif kedua menghujah bahawa transaksi perniagaan di antara defendan-defendan pertama dan kedua dan Tan Han Tiong dari PHL telah membawa kepada isu tiga cek tersebut dan oleh itu defendan pertama dan kedua tidak mempunyai tuntutan terhadap plaintif-plaintif. Ia selanjutnya dihujahkan bahawa PHL dan LCEW adalah entiti yang berasingan dan mendiang plaintif pertama hanyalah utusan di antara PHL, LCEW dan defendan kedua. Tambahan, ia dihujahkan bahawa plaintif kedua hanya telah mengeluarkan cek ketiga kepada defendan kedua setelah diminta oleh Tan Han Tiong daripada PHL, yang telah menjanjikan untuk memasukkan wang ke dalam akaun bank plaintif kedua dengan jumlah tersebut dalam tempoh yang dipersetujui dan bahawa apabila dia gagal melunaskan janjinya plaintif kedua telah menghentikan bayaran cek ketiga. Plaintif-plaintif selanjutnya mendakwa bahawa defendan-defendan keempat, kelima dan keenam telah membenarkan diri mereka digunakan oleh defendan pertama dan kedua untuk mendesak plaintif-plaintif untuk menyelesaikan hutang sivil dan bahawa defendan ketiga sebagai pekerja atau ejen defendan keempat hingga keenam telah berkomplot dengan defendan pertama dan kedua untuk menangkap plaintif-plaintif tanpa menjalankan siasatan yang sewajarnya. Plaintif-plaintif oleh itu menghujah bahawa penangkapan mereka adalah salah di sisi undang-undang, penyalahgunaan kuasa pihak polis di bawah KPJ dan *ultra vires* Perlembagaan Persekutuan.

Diputuskan, menolak permohonan plaintif-plaintif dengan kos:

(1) Plaintif-plaintif yang mempunyai beban untuk membuktikan dakwaan bahawa defendan ketiga hingga keenam telah berkomplot dengan defendan pertama dan kedua untuk menangkap plaintif-plaintif, tidak mengemukakan langsung keterangan untuk menyokong dakwaan-dakwaan tersebut. Oleh kerana mereka telah gagal untuk

melepaskan beban tersebut, dakwaan konspirasi tidak mewajarkan apa-apa perhatian lanjut (lihat perenggan 9).

(2) Ia adalah fakta yang tidak dipertikaikan bahawa ketiga-tiga cek yang diberikan dan dibayar kepada defendan kedua melalui plaintif pertama telah ditendang. Aturan yang dibuat di antara plaintif kedua dan Tan Han Tiong daripada PHL berkaitan dengan pengeluaran cek ketiga bukan masalah defendan pertama dan ia juga tidak relevan bahawa PHL dan LCEW adalah entiti yang berasingan. Dalam keadaan tersebut hak-hak defendan kedua telah dilanggar dan terdapat asas sebenar untuk defendan pertama membuat laporan polis mengadukan bahawa syarikat defendan kedua telah ditipu oleh plaintif-plaintif. Laporan polis tersebut bukan laporan palsu (lihat perenggan 13).

(3) Oleh sebab kewujudan perasaan syak yang munasabah untuk mempercayai bahawa seseorang telah melakukan kesalahan adalah mencukupi untuk membangkitkan mekanisme di bawah s 23(1)(a) KPJ, defendan ketiga berada dalam rangkuman undang-undang dalam menangkap plaintif-plaintif. Defendan ketiga berpendapat bahawa kes tersebut bersifat jenayah kerana ia melibatkan elemen-elemen penipuan dan bahawa kesalahan yang didakwa telah dilakukan adalah kesalahan yang boleh ditangkap di bawah s 420 Kanun Keseksaan, di bawah mana pelaku-pelaku salah boleh ditangkap tanpa waran. Oleh sebab defendan ketiga telah bertindak secara munasabah di dalam tindakannya meneruskan dengan penyiasatannya dan dalam menangkap kedua-dua plaintif, penangkapan mereka adalah wajar dan sah. Selanjutnya, pengakuan plaintif kedua sendiri bahawa dia mengeluarkan cek ketiga untuk jumlah RM17,000 apabila jumlah tersebut tiada di dalam akaun banknya merupakan bukti penipuan (lihat perenggan 17).

(4) Hujahan plaintif-plaintif bahawa perintah reman telah diberikan secara salah dan adalah tidak berperlembagaan langsung adalah tanpa asas dalam ketiadaan apa-apa keterangan sebaliknya. Waran reman di dalam kes ini adalah diluluskan secara sah oleh majistret, mahkamah yang mempunyai bidang kuasa kompeten, mengikut s 117 KPJ. Oleh sebab plaintif-plaintif tidak pernah merayu atau memohon semakan pengeluaran waran reman, mereka tidak boleh menghujah sekarang bahawa waran tersebut dipohon secara salah, diberikan secara salah atau tidak berperlembagaan langsung. Selanjutnya plaintif-plaintif tidak mengemukakan apa-apa keterangan untuk menunjukkan bagaimana majistret telah terkhilaf dalam memberikan waran reman tersebut untuk mewajarkan apa-apa campur tangan (lihat perenggan 22–23).]

Notes

For a case on arrest for false imprisonment, see 12 *Mallal's Digest* (4th Ed, 2005 Reissue) para 637.

For a case on remand, see 5(1) *Mallal's Digest* (4th Ed, 2007 Reissue) para 2782.
For cases on wrongful arrest, see 5(1) *Mallal's Digest* (4th Ed, 2007 Reissue) paras 798–812.

Cases referred to

Chandrasekaran & Ors v PP [1971] 1 MLJ 153 (refd)
Lim Soh Meng & Anor v Krishnan [1967] 1 MLJ 8, FC (refd)
Nanyang Development (1966) Sdn Bhd v How Swee Poh [1970] 1 MLJ 145, FC (refd)
Saul Hamid bin Pakir Mohamad v Inspektor Abdul Fatah bin Abdul Rahman & Anor [2007] 6 MLJ 47; [2007] 5 CLJ 93 CA (refd)
Shaaban & Ors v Chong Fook Kam & Anor [1969] 2 MLJ 219, PC (refd)

Legislation referred to

Criminal Procedure Code ss 23(1)(a), 28, 117
Evidence Act 1950 ss 101, 102
Federal Constitution
Penal Code s 420

Mandave Singh Gill (K Sila Dass & Partners) for the plaintiffs.
Ganesan Karuppannan (Muhammad Ganesan & Nazri) for the first and second defendants.
Wan Suhaila bte Mohd (Senior Federal Counsel, Attorney General's Chambers) for the third, fourth, fifth and sixth defendants.

Ahmadi Asnawi JC:

[1] In 2004 the first defendant was the manager of the second defendant. The second defendant is in the business of operating premix plants and selling premix concrete.

[2] Tan Chin Hin ('the late first plaintiff') died in 2008. He was the father of the second plaintiff who is the sole proprietor of Syarikat Lian Chen Engineering Works ('LCEW'). He was also the father of Tan Han Tiong who was then running Syarikat Perniagaan Hanlink ('PHL').

[3] In 2004, PHL was a customer of the second defendant. The second defendant had sold 863.84 tons of premix at RM68 per ton to PHL. Subsequently PHL paid for the said premix in two cheques vide Maybank cheque No 116108 for RM17,000 ('the first cheque') and Maybank cheque No 096496 for RM36,000 ('the second cheque'). The late first plaintiff was the person who passed these two cheques to the second defendant. Both these two cheques were however, dishonoured upon presentation.

[4] Upon inquiry by the first defendant, another cheque, Maybank cheque No 070312 for the sum of RM17,000 ('the third cheque') was subsequently given to the second defendant, also through the late first plaintiff. This cheque was issued by LCEW. This third cheque was also dishonoured with the remarks '*stopped payment*'. Copies of the three dishonoured cheques were at pp 2, 3 and 4 of *lampiran* 44.

[5] Feeling cheated, on 1 October 2004, the first defendant lodged a police report vide Sri Lalang police report no 567/04, as shown at p 1 of *lampiran* 44.

[6] DW2, the third defendant commenced investigation pursuant to the said report. He arrested the late first plaintiff on 22 March 2005. Meanwhile the second plaintiff was arrested by C/Insp Mohamad bin Taliti. Both plaintiffs were remanded for six days thereafter and both plaintiffs were subsequently charged under s 420 of the Penal Code in Mahkamah Magistret Kluang vide Case No 83–239 of 2005. The case is still pending.

[7] The plaintiffs are now saying that there is no basis for the first defendant to lodge the said police report and therefore the said police report is a false report and pursuant thereto their subsequent arrest and remand were baseless and therefore unlawful.

[8] Hence the plaintiffs are now seeking a declaration against all the defendants that their arrest and remand were unlawful and unconstitutional; the letter dated 25 March 2005 signed by the late first plaintiff at the balai polis (exhibited at p 2 of *lampiran* 59) is null and void and that TSR Capital Bhd cannot rely on it; damages for wrongful arrest and detention; exemplary and aggravated damages; costs and interest.

ISSUE OF CONSPIRACY

[9] In para 26 of their amended statement of claim, the plaintiffs alleged that the fourth, fifth and sixth defendants have allowed themselves to be used by the first and second defendants to exert pressure on the plaintiffs to settle a civil debt and that the third defendant, being the servant or agent of the fourth, fifth and sixth defendants had conspired with the first and second defendants and had proceeded to arrest the plaintiffs without carrying any proper investigation. The burden is squarely upon the plaintiffs to prove so. However, not an iota of evidence was adduced by the plaintiffs to support the allegations. It is imperative upon the plaintiffs to discharge the burden that the fourth, fifth and sixth have allowed themselves to be used by the first and second defendants and that the third defendants had conspired with them (see — ss 101 and 102 of the Evidence Act 1950; *Chandrasekaran & Ors v Public Prosecutor* [1971] 1 MLJ 153; *Nanyang Development (1966) Sdn Bhd v How Swee Poh* [1970] 1

MLJ 145; *Lim Soh Meng & Anor v Krishnan* [1967] 1 MLJ 8). On account that the plaintiffs had failed to discharge the said burden, it follows through that the said allegations does not warrant any further attention.

THE ISSUE OF WHETHER THE FIRST DEFENDANT HAS THE RIGHT AND BASIS TO LODGE THE SAID POLICE REPORT

[10] The plaintiffs submitted that the first defendant has no right or any basis to lodge the said report and accused the second plaintiffs of cheating them. The submission was grounded upon the premise that the first and second plaintiff has no business dealing with the first and second defendants. The business transaction was purely between the first/second defendant and Tan Han Tiong of PHL and Tan Han Tiong was the main culprit. The first defendant also did not check that PHL and LCEW were separate entities with different directorships. The late first plaintiff was a bankrupt and had no position in either PHL or LCEW. He was a mere messenger between PHL/LCEW and the second defendant. Additionally the first defendant did not investigate the circumstances under which the third cheque was passed to the second defendant.

[11] It was the second plaintiff's contention that he issued the third cheque upon the request of the said Tan Han Tiong (of PHL) who had promised the second plaintiff that he will bank in RM17,000 into the second plaintiff's bank account on or before 1 July 2004. The second plaintiff subsequently discovered that the said Tan Han Tiong had not banked in the said sum as promised. This prompted the second plaintiff to write a letter on the Malayan Banking Bhd, Batu Pahat, on 26 July 2004 instructing the said bank to stop payment on the said third cheque, to avoid being blacklisted by the banking authorities. He had never harboured any intention to cheat the second defendant. It was thus submitted that the first defendant has no basis to lodge the said police report and to accuse the second plaintiff of cheating them therein.

[12] However, it is apparent that the first defendant lodged the said police report only after the third cheque was also dishonoured. It was dishonoured even after enquiries were made in respect of the first two cheques which were dishonoured earlier. In such event it is only reasonable to expect the first defendant to question the intention of the parties or whoever it was who submitted the third cheque to the second defendant. Equally it is only reasonable for the first defendant to opine that his company was being cheated under the given circumstances. The arrangement between the said Tan Han Tiong and the second plaintiff in respect of the issuance of the third cheque is none of his business. It has nothing to do with him. Equally the fact that the second defendant has no business dealing whatsoever with first and second

plaintiffs is irrelevant. It is equally irrelevant that PHL and LCEW were separate entities. The fact not disputed is that the third cheque was a replacement of the second cheque.

[13] As the beneficiary of the said cheques, the first/second defendant had a valid expectation in law that their due through the said cheques would be paid. The undisputed fact stood out that all the three cheques given to and paid in favour of the second defendant through the late first plaintiff were dishonoured. The natural course of action for the first defendant in such circumstances is to lodge a police report as his company's rights has been transgressed. Verily there is a real basis for the first defendant to lodge the said report that his company was being cheated and on the facts it is my view that the said report is not a false report. No one can hinder the first defendant from lodging the said police report containing the said allegations upon the facts and circumstances of the case.

THE ISSUE OF THE VALIDITY OF THE ARREST

[14] Learned counsel for the plaintiff repeated the submission that there is no basis at all to arrest the plaintiffs and the said arrest by the third defendant is unlawful, illegal and capricious. Again the submission is grounded upon the premise that first defendant's report is a false report and that the plaintiffs have no business dealing with the second defendant. The main culprit was Tan Han Tiong and PHL. There was no proper investigation that the first plaintiff was a bankrupt and could not make any business dealings with the second defendant and that PHL and LCEW were separate legal entities. The second plaintiff's name was never mentioned in the police report. There were also no elements of forgery of the third cheque nor elements of theft or other forms of criminality.

[15] It is also the submission that the third defendant did not investigate that the second plaintiff stopped payment of the said third cheque because he did not want to cheat the second defendant. Additionally the dishonoured cheques clearly came under the jurisdiction of the civil courts and does not have any criminal element at all. All the more so when the third defendant admitted that the said police report was in connection with issues of outstanding sums not paid. The transaction between the plaintiffs and the first and second defendants were purely business transactions and there was no necessity of police interference and the issuance of the cheques by the said Tan Han Tiong and the second plaintiff's were merely promises to pay and there is no criminal

intent at all. Hence the arrest of both the plaintiffs were unlawful and an abuse of police power under the CPC and ultra vires the Federal Constitution.

[16] However in my view these are issues of evidence to be deliberated and evaluated at the criminal trial of both the plaintiffs. The forum before me is not too deliberate upon the guilt of both the plaintiffs relating to a criminal offence but to determine the propriety of the third defendant's action in arresting both the plaintiffs in the light of the allegations levelled against him.

[17] In my view, the act of the third defendant in arresting both the plaintiffs is well within the law. Section 23(1)(a) of the Criminal Procedure Code (CPC) is on his side. A reasonable suspicion that one has committed an offence is enough to trigger the arrest mechanism. The test to be applied at this stage is merely the existence of a reasonable suspicion to believe that the person has committed an offence. The standard is lower than that required to show the existence of a prima facie case. The Privy Council case of *Shaaban & Ors v Chong Fook Kam & Anor* [1969] 2 MLJ 219 gives a complete mechanism how it works. At p 11, Lord Devlin stated:

> ... Suspicion in its ordinary meaning is a state of conjecture or surmise where proof is lacking: 'I suspect but I cannot prove.' Suspicion arises at or near the starting-point of investigation of which the obtaining of prima facie proof is the end. When such proof has been obtained, the police case is complete; it is ready for trial and passes on to its next stage. It is indeed desirable as a general rule that an arrest should not be made until the case is complete. But if arrest before that were forbidden, it could seriously hamper the police. To give power to arrest on reasonable suspicion does not mean that it is always or even ordinarily to be exercised. It means that there is an executive discretion. In the exercise of it many factors have to be considered besides the strength of the case. The possibility of escape, the prevention of further crime and the obstruction of police enquiries are examples of those factors with which all judges who have had to grant or refuse bail are familiar. There is no serious danger in a large measure of executive discretion in the first instance because in countries where common law principles prevail the dicretion is subject indirectly to judicial control. There is first the power, which Their Lordships have just noticed, to grant bail. There is secondly the fact that in such countries there is available only a limited period between the time of arrest and the institution of proceedings; and if a police officer institutes proceedings without prima facie proof, he will run the risk of an action for malicious prosecution. The ordinary effect of this is that a police officer either has something substantially more than reasonable suspicion before he arrests or that, if he has not, he has to act promptly to verify it. In Malaysia the period available is strictly controlled by the Code. Under s 28 the suspect must be taken before a magistrate at the latest within 24 hours. If the investigation cannot be completed in 24 hours and there are grounds for believing that the accusation or information is well founded, under s 117 the magistrate may order the detention of the accused for a further period not

A exceeding 15 days in the whole. By allowing 15 days after arrest for investigation the Code shows clearly that it does not contemplate prima facie proof as a prerequisite for arrest …

Further down His Lordship continued:

B There is another distinction between reasonable suspicion and prima facie proof. Prima facie proof consists of admissible evidence. Suspicion can take into account matters that could not be put in evidence at all...

The Court of Appeal in *Saul Hamid bin Pakir Mohamad v Inspektor Abdul* C *Fatah bin Abdul Rahman & Anor* [2007] 6 MLJ 47; [2007] 5 CLJ 93 also followed the ruling in *Shaaban & Ors*. Zulkefli Makinudin JCA (as he then was) stated at para 50 p 117:

The first defendant had arrested the plaintiff because he believed DW1's police report as reasonable. He had reasonable suspicion that the plaintiff committed the D offences and arrested him. Whether he has reasonable cause is a question of fact for the learned trial judge to determine and in this case the learned trial judge had made a finding of fact that the arrest of the plaintiff was lawful in the circumstances of the case. The police report No 641/87 by DW1 is the basis of the investigation by the first defendant and as had been held in *Shaaban*'s case suspicion can take into E consideration matters that could not be put in evidence at air.

[18] Adverting to the case before me the third defendant ('DW2') testified that he arrested the late first plaintiff based upon the information received from F Sri Lalang police report No 567/04 made by the first defendant. The report specifically mentioned the cheque numbers and amounts dishonoured and the parties involved. He saw the complainant and requested the complainant ('first defendant') to identify the late first plaintiff as the person who passed the dishonoured cheques to him. His line of investigation was centred upon the G said dishonoured cheques and the persons who issued the said cheques. He opined that the case is criminal in nature as it involved elements of deception and that the offence committed is a sizeable offence under s 420 of the Penal Code where the perpetrators could be arrested without warrant. He could not arrest the said Tan Han Hong, the person mentioned in the said police report H as the said person had absconded. His investigations also revealed that the third cheque was issued by LCEW though he is not sure that the same is under the sole proprietorship of the second plaintiff. From the entirety of his testimony it is obvious that he harboured the reasonable suspicion that both the plaintiffs and the said Tan Han Hong were all involved in the issuance of the said I dishonoured cheques.

[19] I could find no fault with what the third defendant did. He had acted reasonably in his actions in pursuing with his investigations and thereafter in arresting both the plaintiffs. Plainly there was a reasonable suspicion on his part that both the plaintiffs had committed the offence as complained by the first defendant. Hence I so find that the arrest of both the plaintiffs were proper and lawful in all the circumstances of the case.

[20] Additionally there is also the second plaintiff's own admission that at the time he issued the third cheque, the said sum of RM17,000 was never there in his bank account. Now, it is settled law that it is equally unlawful to issue cheques upon insufficient fund. To do so intentionally is plain deception.

[21] The third defendant next submitted the investigation papers to the public prosecutor for directions. In the hands of the public prosecutor, the reasonable suspicion harboured by the third defendant crystallised into prima facie evidence resulting in the prosecution of both the plaintiffs on a charge under s 420 of the Penal Code in Mahkamah Magistret Kluang. Now, it is trite that constitutionally, the prosecution of both the plaintiffs upon the aforesaid charge is the sole business and prerogative of the public prosecutor. It has nothing to do with the police. It is preposterous to suggest that the public prosecutor acted blindly upon the recommendation of the third defendant in prosecuting both the plaintiffs without due regard to the evidence presented before him.

THE ISSUE OF THE VALIDITY OF THE REMAND

[22] Learned counsel for the plaintiffs submitted that the remand was wrongly sought for an alleged offence which does not come under any criminal/penal laws and that the matter in issue was civil in nature involving business transaction. Equally the remand order was wrongly granted without any reasons being given nor grounds being supplied and totally unconstitutional depriving the liberties of the plaintiffs.

[23] However I am of the view that the contention is without basis. It is trite that the granting of a warrant of remand by the magistrate is a judicial exercise fully sanctioned by law by virtue of s 117 of the CPC. Again it is the sole discretion of the magistrate whether to grant or otherwise refused the application for warrant of remand pending further investigation depending upon the sufficiency of the grounds justifying further detention under remand. Here the warrant of remand was lawfully passed by the magistrate, a court of competent jurisdiction. There was no complaint from the plaintiff then about the granting of the warrant of remand. Neither did the plaintiffs appealed nor sought a revision of the granting of the said warrant by the magistrate. As such

it is not open to the plaintiffs now to contend that the warrant of remand was wrongly sought and wrongly granted or that the said warrant of remand was totally unconstitutional.

[24] Additionally there is nothing in law prohibiting the police to apply under s 117 of the CPC for a warrant of remand to extend the detention of the plaintiffs if their investigation could not be completed within the first 24 hours of their arrest/detention. Further there is nothing in law mandating the magistrate to supply the grounds of granting the warrant of remand to the plaintiffs unless there is an appeal over the same. Finally the plaintiffs has not adduced any evidence to show where or how the magistrate has gone wrong in granting the said warrant of remand to warrant interference by me.

[25] As the said warrant of remand was lawfully passed/ordered by the magistrate, a court of competent jurisdiction, it could not be said that the said warrant of remand is wrongly granted or is totally unconstitutional in the absence of any evidence to the contrary. It could not be so said when it is provided by law and the procedural safeguards and legal requiremenst are in place and observed. Equally the plaintiffs has not shown that the procedural safeguards and legal requirements were not in place nor observed. The burden is upon the plaintiffs to do so. I am satisfied that the plaintiff has not discharged the said burden apart from rhetorics in court.

[26] Hence I have no hesitation in dismissing learned counsel's submissions on this issue.

DECLARATION THAT THE LETTER DATED 25 MARCH 2005 SIGNED BY THE LATE FIRST PLAINTIFF IS NULL AND VOID AND THAT TSR CAPITAL BHD CANNOT RELY ON THE SAME

[27] This letter is exhibited at p 2 of *lampiran* 59 and ventilated at length in paras 24 and 25 of the plaintiffs' amended statement of claim.

[28] However I am of the view that no evidence was adduced by the plaintiffs to support the aforesaid averments in their amended statement of claim. In fact the second plaintiff testified that he has no knowledge about the said letter nor any knowledge about the existence of the said letter. Hence it is a non-issue

altogether.

DECISION

[29] For the reasons enumerated above I dismissed both the plaintiffs application for the declaratory reliefs sought on all counts with costs.

The plaintiff's application dismissed with costs.

Reported by Kohila Nesan